

Application No.: 10/763,445

Docket No.: 66046-0007

REMARKS

Applicants are in receipt of the Office Action mailed August 25, 2005, providing guidance on the original intentions of the Examiner with respect to an election/restriction requirement. Claims 42-48 have been withdrawn.

A. Restriction

The Examiner indicated that the patent application contains claims directed to the following alleged patentably distinct inventions:

- I. Claims 1-41 and 49-50, drawn to electric motor control for a transmission, classified in class 477, subclass 3.
- II. Claims 42-48, drawn to engine control during shift, classified in class 477, subclass 109.

Based on review of the claims, Applicants confirms its previous election of the claims of Group I, with traverse. Thus, claims 1-41 and 49-50 are selected explicitly for examination. Claims 42-48 remain withdrawn. However, it is respectfully submitted that the restriction is inappropriate since, as the Examiner acknowledges in the Office action, claims 37-50 are generic.

Moreover, it is respectfully submitted that the subject matter of the indicated groups is sufficiently related that a thorough search for the subject matter of the selected species would encompass a search for the subject matter of the other species. See MPEP § 803, which states that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." This policy should apply in the present application to avoid unnecessary delay and expense to the Applicants and duplicative examination by the Patent Office.

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B. Election of Species

The Examiner has identified the following species:

Transmission 1:	Figure 2
Transmission 2:	Figure 3
Shunt 1:	Figure 4
Shunt 2:	Figure 5

Claims 1-4, 7-8, 11-19, 22-30, 33-34 and 37-50 are deemed generic. The rationale for the election is not explained in the office action.

The Examiner has clarified that he requires an election of both a transmission and a shunt. Further, a typographical error has been corrected. Applicant now understands that claims 22-30 are among the generic claims as opposed to claims 22-23 in the prior office actions, which helps to clarify previous confusion.

As a practical matter, it is believed that in view of the significant number of generic claims identified by the Examiner in the office action, it is believed that a search of records encompassing distinct species of transmissions and shunts, to the extent that there are such species, will be required.

With respect to the selection between transmissions, the transmission of Figure 2 is selected. However, it is respectfully submitted that all claims are generic between the transmission of Figure 2 and the transmission of Figure 3. As stated in Paragraph [0021] in the embodiment of figure 3, first motor-generator is connected to the input of transmission 24 through a power takeoff (PTO) of transmission 24. In a representative configuration shown in Figure 3, the first motor-generator 28 is connected to a power takeoff gear 90, which is meshed with second headset gear 54 on countershaft 46. However, as also recited in the paragraph, element 28 may be connected with a gear or other device on the upstream side of clutch 26. As one example, the specification recites that the motor-generator 28 may be connected to prime mover 22 by an engine accessory drive belt, such as is used for an alternator or a power steering pump. The specific limitations associated with the embodiment of Figure 3 are not believed to be recited in any claims.

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With respect to the selection of embodiments directed to shunts, the embodiment of Figure 4 is directed to an electric power shunt while Figure 5 is a hydraulic power shunt. Claims 5, 9, 20, 31, and 35 are directed to the embodiment of Figure 4 while claims 6, 10, 21, 32, and 36 are directed to the embodiment of Figure 5. These claim pairings appear to be consistent with the listing of non-generic claims identified by the Examiner. Applicant selects the embodiment of Figure 4 with traverse for the reasons discussed above. Thus, claims 6, 10, 21, 32, and 36 have been withdrawn.

C. Conclusion

In view of the comments above, claims 42-48 and 6, 10, 21, 32, and 36 are withdrawn with traverse.

It is believed that any additional fees due with respect to this paper have already been identified. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC.

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Respectfully submitted,

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